

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

TRINITY TANK CAR, INC., et al.,

Plaintiff,

v.

DAVIS-FROST, INC.,

Defendant.

Civil Action No. 6:22-cv-22-NKM-RSB

**THIRD PARTY-DEFENDANTS'
INITIAL DISCLOSURES PURSUANT
TO FED. R. CIV.P. 26(a)(1)**

DAVIS-FROST, INC.,

Third-Party Plaintiff,

v.

BRENNTAG SPECIALTIES, INC.;
BRENNTAG SPECIALTIES, LLC; and
BRENNTAG NORTH AMERICA, INC.

Third-Party Defendants.

**TO THIRD-PARTY PLAINTIFF DAVIS-FROST, INC. AND TO IT'S
COUNSEL OF RECORD:**

THIRD-PARTY DEFENDANTS, BRENNTAG SPECIALTIES, INC., now known as BRENNTAG SPECIALTIES, LLC (“BSI”) and BRENNTAG NORTH AMERICA, INC. (“BNA”), hereby submit the following disclosures in accordance with Fed. R. Civ. P. 26(a)(1), based upon such information as is reasonably available to them at this time.

BSI and BNA have not yet completed their investigation, and discovery in this matter has not yet begun, but BSI and BNA have made a diligent and good faith effort to identify and collect information with which to prepare these disclosures. Accordingly, BSI and BNA's disclosures are made without prejudice to their right to amend, or supplement these disclosures under Fed. R. Civ. Proc. 26(e), or to introduce at the trial of this case additional evidence and documents from any source.

PRELIMINARY STATEMENT

1. BSI and BNA make these disclosures without waiving the right to object on any proper grounds with respect to documents, witnesses, or other information described in these disclosures, or the right to object to the use of any matters disclosed herein for any purpose in any subsequent proceedings in this action or in any other action.

2. BSI and BNA make these disclosures without waiving the right to object on any and all proper grounds to any discovery requests under the Federal Rules of Civil Procedure and the Local Rules in this action, or in any other action. BSI and BNA specifically reserve all objections to the use of these disclosures.

3. BSI and BNA provide these disclosures without prejudice to their right to introduce at trial any evidence that is subsequently discovered or recognized to be material. In addition, BSI and BNA reserve the right to refer to, conduct discovery with reference to, or offer as evidence at trial, any and all facts, documents, and other information related to this matter. Each of the foregoing statements in this Preliminary Statement is incorporated by reference into each of the specific disclosures below.

INITIAL DISCLOSURES

I. INDIVIDUALS WHO MAY POSSESS DISCOVERABLE INFORMATION.

Per Rule 26(a)(1)(A)(i), BSI and BNA identify the following individuals who may possess discoverable information that it may use to support its claims or defenses. BSI and BNA's investigation is ongoing and there may be additional witnesses identified during the course of the ongoing investigation, or through future discovery in this matter. BSI and BNA therefore reserve the right to call at trial witnesses not listed in these disclosures, including but not limited to all witnesses named by the other parties to this case in their Fed. R. Civ. P. 26(a)(1) Initial Disclosures or supplements thereto, all witnesses named by parties in their responses to discovery requests, all witnesses whose names appear on documents produced by the parties in this matter, and record custodians for all documents.

Name of Individual Likely to have Discoverable Information	Contact Information	Subject Matter of Discoverable Information
Mike Polek, BSI	c/o Undersigned Counsel for BSI	On information and belief, knowledge of the sale of Kumanox 3111F to Davis-Frost, Inc. ("Davis-Frost"), including conversations with Davis-Frost about Kumanox 3111F.
Park Yun Cheol, Kumho Petrochemical	#1557, Yuseong-daero, Yuseong-gu, Daejeon-si, 34044, South Korea TEL 042 865 8697	On information and belief, knowledge of the properties Kumanox 3111F and sale of Kumanox 3111F to BSI and Davis-Frost.

Darren Lowe, Davis-Frost	c/o Counsel for Davis-Frost	On information and belief, knowledge of Davis-Frost's purchase of Kumanox 3111F, the properties of Kumanox 3111F, the formulation of RailGard 9000, and issues with cratering and discoloration of RailGard 9000.
Cal Henning, Davis-Frost	c/o Counsel for Davis-Frost	On information and belief, knowledge of Davis-Frost's purchase of Kumanox 3111F.
David Wheat, Esq., BNA	c/o Undersigned Counsel for bna	On information and belief, knowledge of Davis-Frost's submission of a Warranty Claim and Product Defect Claim regarding Kumanox 3111F to BNA.

BSI and BNA reserve the right to supplement their response, in the event further investigation or discovery reveals other persons with relevant knowledge. In addition to the persons identified above, other corporate representatives may have similar knowledge, and BSI and BNA reserve the right to amend the above list to reflect ongoing position changes at BSI and BNA.

II. DOCUMENTS.

As required by Rule 26(a)(1)(A)(ii), BSI and BNA provide the following descriptions of documents, electronically stored information, and tangible things within their possession, custody, or control that may be used by BSI and BNA to support their defenses in this action.

Category of Document, ESI, or Tangible Thing	Location
Kumanox 3111F vs Nonyl Phenol Comparison	BSI and/or BNA's files
Davis-Frost's Purchase Orders for purchases of Kumanox 3111F	BSI and/or BNA's files
Bills of Lading/Shipment Receipts for sales of Kumanox 311F to Davis-Frost	BSI and/or BNA's files
Technical Data Sheet for Kumanox 311F	BSI and/or BNA's files
Correspondence between representatives of BSI and representatives of Kumho Petrochemical regarding Kumanox 311F	BSI and/or BNA's files
Correspondence between representatives of BSI/BNA and representatives of Davis-Frost regarding Kumanox 311F	BSI and/or BNA's files
Davis-Frost's Root Cause Conclusion Report	BSI and/or BNA's files
Pleadings, excerpts of depositions, and other information disclosed in the case that is currently pending and styled as <i>FreightCar America, Inc. v. Davis-Frost, Inc.</i> , Case No. 6:21-cv-00027-NKM (W.D. Va.).	BSI and/or BNA's files and publicly available

BSI and BNA will produce the documents following the Court's entry of a protective order governing the use of confidential information.

There may be additional documents identified during the course of the ongoing investigation, or through future discovery in this matter. BSI and BNA reserve the right to introduce at trial documents and materials not identified in these disclosures. BSI and BNA also incorporate categories of documents that may be produced during the course of this litigation. BSI and BNA's investigation is continuing and they will supplement this list, or related production, in the event additional non-privileged documents are discovered.

III. COMPUTATION OF DAMAGES.

BSI and BNA currently have nothing to disclose. BSI and BNA's investigation is ongoing and BSI and BNA reserve the right to supplement their response.

IV. INSURANCE.

BSI and BNA are continuing to investigate and will produce, following the Court's entry of a protective order, any insurance agreements held by BSI and BNA which are relevant to this action.

Dated: August 1, 2022

By: /s/ Mark J. Peake

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Dated: August 1, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2022, I emailed a copy of the foregoing to the following parties at the following referenced addresses:

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